IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT

JODHPUR

: J U D G M E N T :

BHANWAR SINGH & ANR. VS. STATE OF RAJASTHAN

D.B. CRIMINAL APPEAL NO. 403/2003
against the judgment dated 26.3.2003 passed by the learned Additional Sessions Judge (Fast Track), Parbatsar, District Nagore in Sessions Case No.10/2002 (43/98)

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DATE OF JUDGMENT :: 2nd JUNE, 2006

PRESENT

HON'BLE MR. N.N. MATHUR, J.
HON'BLE MR. MANAK MOHTA, J.

Mr. Manoj Kumar Garg] for the appellants.
Mr. Niranjan Singh]
Mr. V.R. Mehta, Public Prosecutor.
Mr. J.S. Choudhary, for the complainant.

BY THE COURT : (PER HON`BLE MANAK MOHTA, J.)

1. The instant appeal is directed against the judgment of conviction and sentence dated 26.3.2003 passed by learned Additional Sessions Judge (Fast Track), Parbatsar in Sessions case No.10/2002 (43/98) whereby the accused-appellants have been convicted for the offence under Section 302 I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/- each, in default of payment of fine, further to undergo one month's

simple imprisonment. Manohar Singh and Smt. Magan Kanwar were acquitted from the charge of 302/34 I.P.C. but convicted under Section 323 I.P.C. and sentenced to the period already undergone in judicial custody.

2. The prosecution case, as disclosed during trial, is that Gumana Ram (PW-8) gave a written report to the SHO, P.S. Makrana on 3.7.1996 at 7:30 p.m. at the scene of occurrence i.e. field of Ram Dev situated on the outskirts of Village Barwali stating therein that they purchased an agricultural field measuring 15 bighas from one Madan Lal. The registry of said field was made on 1.7.1996 in the name of Ram Dev (brother of first informant) and the possession thereof was handed over to them. It was further stated that on 3.7.1996, first informant, his wife-Smt. Bhanwari Devi, Govind Ram and Rawat Ram reached at their field in the tractor of Bhagirath Singh at 3:00 p.m. for carrying out agricultural activity. A young boy named Naveen was also there alongwith them. The driver of the tractor was Ramu Ram, who is also the resident of Barwali. They were cleaning the field. Ramu Ram was tilling the field with the aid of tractor. In the evening at about 5:15 p.m., all of a sudden from the nearby field and 'dhani of Bhanwar Singh', appellant-Bhanwar Singh and his son Rajendra Singh entered into the field of complainant-party, both were having

'kulhadi' (axe) in their hands. Bhanwar Singh gave a 'kulhadi' blow on the neck of Govind Ram and Rajendra Singh gave a 'kulhadi' blow on Naveen, who died instantaneously. At that time, wife of Bhanwar Singh, Smt. Magan Kanwar, Manohar Singh and Prithvi Singh also reached there. Smt. Magan Kanwar was armed with 'kassi' and she gave a 'kassi' blow on head and hand of complainant's wife. Manohar Singh and Prithvi Singh were having 'kassi' and 'lathi' respectively in their hands and they also belaboured them. Manohar Singh gave a lathi blow on the head of Rawat Ram. Govind Ram and Naveen died on the spot and Guman Singh, Smt. Bhanwari Devi and Rawat Ram got injured in the incident. Later on Khema Ram came and took injured Smt. Bhanwari Devi to house. The complainant alleged that the accused-party with a view to obtain passage from their field had launched the attack and caused murder.

3. On the basis of this report (Exh.P/1), a case for the offence under Sections 147, 148, 149, 307, 302 and 323/447 I.P.C. was registered and FIR No.247/96 (Exh.P/97) was chalked out and the investigation commenced. The police inspected the place of occurrence and prepared site-plan (Exh.P/2), collected blood-smeared soil and general soil from the site and collected the clothes from the bodies of deceased-Govind and Naveen and also collected

other materials from the site. After preparation of Panchayatnama, (Exh.P/19) and (Exh.P/20) of the dead-bodies, the Police got conducted the post-mortem of dead-bodies of Govind & Naveen. The Investigating Officer recorded the statements of the witnesses and arrested accused Bhanwar Singh vide arrest memo Exh.P/22 and at his instance 'Kulhari' (weapon of offence) was recovered in presence of motbir witnesses. The accused-Rajendra Singh was also arrested vide Exh.P/92 and other accused persons were also arrested and at their instance weapons of offence were also recovered. The police carried out other legal formalities during the course of investigation. The relevant material was sent for analysis to Forensic Science Laboratory. After completion of investigation, police filed charge-sheet against Bhanwar Singh, Manohar Singh and Smt. Magan Kanwar under Sections 302, 302/34, 323 and 447 IPC. The case was committed to trial court. Charges were framed against the accused under Sections 302, 302/34 and 323 I.P.C., who denied the same and sought trial. The police also submitted report that no case against Rajendra Singh and Prithvi Singh is made out but later on against appellant-Rajendra Singh cognizance under Section 319 Cr. P.C. was taken of Section 302, 302/34 I.P.C. and he was summoned vide order dated 27.5.1997. The said order was challenged before this Court by accused-Rajendra Singh but that was upheld vide order dated

8.8.1987. The charges under Section 302 and 302/34 I.P.C. were also framed against him. He denied the charges and also claimed trial. Accused-Prithvi Singh was found to be child and thus the matter was reported to Juvenile Court.

4. The prosecution in support of its case examined as many as 30 witnesses, namely, PW-1 Nanu Ram, PW-2 Dr. C.P. Mathur, PW-3 Mula Ram, PW-4 Rawat Ram, PW-5 Prabhu Ram, PW-6 Ratna Ram, PW-7 Hema Ram, PW-8 Gumana Ram, PW-9 Smt. Bhanwari Devi, and PW-10 Meva Ram, PW-11 Khema Ram, PW-12 Ram Singh, PW-13 Madan Lal, PW-14 Ramu Ram, PW-15 Bhanwar Lal, PW-16 Bhaarta Ram, PW-17 Kesara Ram, PW-18 Chandra Ram, PW-19 Hari Kishan, PW-20 Rugga Ram, PW-21 Dr. Ramesh Bhambhani, PW-22 Dr. R.B. Singhal, PW-23 Kailash, PW-24 Kan Singh, PW-25 Magga Ram, PW-26 Narendra Kumar Singh, PW-27 Amra Ram, PW-28 Raj Kumar, PW-29 Raniya Ram and PW-30 Prithvi Raj and got exhibited certain documents as Exh.P/1 to Exh.P/97. After completion of prosecution evidence, the statements of accused-appellants were recorded under Section 313 Cr. P.C., who in turn denied the correctness of prosecution evidence appearing against them. Accused-Bhanwar Singh, Smt. Magan Kanwar and Manohar Singh claimed themselves to be innocent and stated that they have been falsely implicated in the case whereas accused-Rajendra Singh

took plea of alibi and stated that at the time of incident he had gone to his in-law's house at Jerti, District Sikar. In defence, DW-1 Naadan Singh, DW-2 Rupendra Singh, DW-3 Surendra Singh, DW-4 Pokarmal and DW-5 Manbhar Kanwar were examined.

5. After hearing the parties, the learned trial court found the prosecution case proved beyond all reasonable doubts against the accused-appellants, turned down the defence version and held the appellants guilty for committing murder of Govind Ram and Naveen. The learned court convicted and sentenced the appellants as mentioned above vide judgment dated 26.3.2003. Hence, this appeal has been filed.

6. We have heard Mr. Niranjan Singh, learned counsel for the appellants, learned Public Prosecutor for the State Mr. V.R. Mehta assisted by learned counsel for the complainant Shri J.S. Choudhary and have carefully gone through the record of the case.

7. During the course of arguments, learned counsel for the appellants submitted that the learned trial court has not properly considered and appreciated the material available on record and has given erroneous finding with regard to the guilt of accused-appellants, which deserves to be rejected. It was submitted by the

learned counsel that it has come in the evidence that PW-4 Rawat Ram who is alleged to be an eye-witness and who was also injured in the incident, went to the Police Station and reported the matter to the police, his report was entered in 'Roznamcha' but the police did not treat that report as first information and wrongly relied on the report (Exh.P/1) submitted by PW-8 Gumana Ram. It was urged that the prosecution has not placed that report on record, thus, it has withheld a material document. It was further submitted in this reference that the name of Rajendra Singh was not mentioned in that 'Roznamcha' and his name was added later after consultation with ulterior motive and, therefore, the 'Roznamcha' was not produced. The prosecution was not fair to this extent and an adverse inference should have been taken. Thus, non-production of 'Roznamcha' casts serious doubts about prosecution story. It was also contended by learned counsel for the appellant that the accused-appellant Rajendra Singh was not present at the occurrence and he had gone to his in-laws' house which was at a distant place at Jerti in district Sikar. The police after investigation, also came to the conclusion that accused-appellant Rajendra Singh was not involved in the incident and they submitted the same report in the court. His name was added with a view that nobody remained outside to defend the family of Bhanwar Singh. It was urged that the other family members of Bhanwar Singh have

already been implicated in this case. It was further contended that appellant-Rajendra Singh was arrested soon after the occurrence but no recovery of any weapon of offence i.e. alleged to be 'kulhadi' has been made, that also give weight to his contention that he was not involved in the incidence. On behalf of appellant-Rajendra Singh as good as defence witnesses were produced and it has been established from the evidence that appellant-Rajendra Singh was at his in-laws' house at Jerti in Sikar district but the learned trial court has not properly considered the plea of alibi and has not appreciated the defence evidence in right perspective. Therefore, the finding of guilt as recorded by the trial court to the extent of accused-appellant Rajendra Singh is not sustainable at all. It was also urged that the prosecution has not placed the true version before the trial court. There was a passage from the field which was just purchased by the complainant-party and the appellant's family were using the same for the last 8-10 years, which the complainant-party wanted to close. When they were requested not to close that way, they started quarrelling. The fight was initiated by the complainant-party but the learned trial court has not properly appreciated the material. It was submitted that in the instant case there is no independent witness of occurrence. The prosecution has mostly relied on the testimony of the alleged eye-witnesses, namely, PW-4 Rawat Ram, PW-8 Gumana Ram, PW-9 Smt.

Bhanwari Devi and PW-14 Ramu Ram they are highly interested witnesses and are close relatives of the deceased. It was submitted that there are material contradictions in their statements and the witnesses have improved their statements during trial. The recovery of 'kulhadi' and other material are false. Finally, it was submitted by the learned counsel for the appellant that the prosecution has not been able to prove its case beyond doubts, yet the learned trial court has committed grave error in convicting and sentencing the appellant for committing the murder of Govind and Naveen. The judgment and order dated 26.3.2003 deserves to be set aside, the accused-appellants be acquitted and the appeal may be allowed.

8. On the other hand, learned Public Prosecutor with the assistance of learned counsel for the complainant refuted the contentions placed by the appellant's side and supported the judgment of the trial court. It was submitted that the prosecution has placed all relevant material before the Court and by producing evidence, the charges against the accused-appellants are proved beyond doubts, there is no truth in defence version and that has rightly been rejected by the learned trial court. It was further submitted that in fact no report was lodged by PW-4 Rawat Ram to police. PW-26 Narendra Kumar Singh has explained that Rawat Ram simply intimated that quarrel had taken place in Village Barwali

and on his report, without loss of time, police reached on the spot where written report (Exh.P/1) was submitted to police. Thus, there is no question of not producing any earlier report. The contention of the appellants that the name of Rajendra Singh was not mentioned and later on his name was added is totally without any basis. Neither that 'Roznamcha' was called by the defence side nor any question has been asked to the Investigating Officer in this respect. Thus, the prosecution cannot be blamed for withholding any document. It was also stated by the prosecution that the accused-appellant Rajendra Singh was present from the very beginning alongwith Bhanwar Singh. He also entered into the field of the complainant-party and was having a 'kulhadi' in his hand and participated in committing the crime. He attacked with 'kulhadi' on the neck of Naveen, resulting into his death on the spot. It was urged that merely because 'kulhadi' could not be recovered at his instance, it cannot be said that he was not present at the time of occurrence. The eye-witnesses who were injured in the same incident have deposed that accused-appellant Rajendra Singh was present and he attacked on Naveen. PW-14 Ramu Ram is an independent witness. He has also established the presence of Rajendra Singh. The plea taken by him is not having any base and the evidence produced in this respect are not creditworthy, the learned trial court has rightly rejected the plea of alibi. It was

contended by the learned Public Prosecutor that with regard to the plea of alibi, strong evidence is required on that basis one conclusive conclusion could be drawn but in this case, no such type of evidence has been produced. In the instant case, there are four eye-witnesses. There presence is natural. They have specifically stated the role of accused-appellants and in such a situation, motive looses its importance. It was also contended that the occurrence has taken place in the field of complainant-party. Thus, it is clear that the accused-party was the aggressor. They entered into their field and committed serious crime. It was prayed that the judgment of learned trial court be confirmed and the appeal may be disallowed.

9. Before adverting to the contentions raised by the learned counsel for the appellants, it would be just and proper to briefly survey the oral evidence adduced by the prosecution :-

10. **PW-1 Nanu Ram, PW-5 Prabhu Ram and PW-6 Ratna Ram** are the witnesses of fards. **PW-1 Nanu Ram** has stated that at the site of occurrence dead-bodies of two persons Govind and Naveen were lying. The police inspected the site, prepared site plan (Exh.P/2) and took blood-smeared soil and general soil from two places. The police also collected blood stained

contained clothes of dead-bodies and slippers from the site and sealed them on the spot. Panchayatnamas of dead bodies were carried out and in the opinion of Panchas, the deaths were caused by sharp-weapon. He made his signature on the Fards. He has been confronted with his previous statement (Exh.D/1) and cross-examined also but nothing adverse has come out. **PW-5 Prabhu Ram and PW-6 Ratna Ram** were also present at the time of Panchayatnama and marked their signature on Exh.P/19 and Exh.P/20.

11. **PW-2 Dr. C.P. Mathur, PW-21 Dr. Ramesh Bhambhani and PW-22 Dr. R.B. Singhal** are the witnesses who conducted post-mortem of dead bodies of Govind and Naveen. PW-2 Dr. C.P. Mathur was the Chairman and the others were the Members of Medical Board. They conducted the post-mortem of dead-bodies on the spot and noted the following injuries on the dead-body of Govind :

> "1. Incised wound measuring 15cm x 6cm x 7 cm placed obliquely on posterior side of neck extending from posterior side of right pinna (central part) reaching downward obliquely to the left 3 cm above upper border of left scapula. All vessels, muscles & bones in the wound are cut. Right mastoid process, lateral part of 6th cervical vertebra & middle part of 7th cervical vertebra with spinal cord are completely cut. Blood and clots present in wound. Fractured ends of bones are deeply stained with blood.

> 2. Incised wound 2 cm x 0.4 cm x skin deep on supro-posterior portion of left shoulder. Oblique in direction covered with clotted blood.
>
> 3. Incised wound 3 cm x 1 cm x bone deep on right parietal region of scalp transverse in direction. All wounds are Ante mortem in nature."

All the injuries were ante-mortem in nature and injury No.1 was sufficient to cause death. In the opinion of the Board, the cause of death was shock due to cutting of spinal cord and hemorrhage. The report is Exh.P/14 it bears their signatures. They have stated that all the injuries were of sharp weapon. Likewise, on the same day they conducted the post-mortem of NAVEEN and on his body following injuries were found :

> "Incised wound measuring 23.0 cm x 8.5 cm x 10.0 cm skin deep extending from posterior aspect of right shoulder obliquely down wounds upto left side of Second Thoracic vertebrae. All the muscles, vessels and bones in the wound are cut. Lateral end of clavicle (R) with Achimon process of right scapula and second thoracic vertebrae with spinal cord are cut. Apical region of upper lobe of right lung is cut in line of wound measuring 4.0 cm x 1.5 cm x 3.0 cm deep. Wound contains blood & cloths. Fractured ends of bones are deeply stained with blood. Injury is ante mortem"

They have further stated that all the injures were ante-

mortem in nature and were caused by sharp weapon like 'kulhadi'. In the opinion of Board injury on spinal cord was sufficient to cause death. The cause of death was injury on spinal cord and shock due to bleeding. The post-mortem report is Exh.P/15 which bears their signatures. **PW-2 Dr. C.P. Mathur** has further stated that he also medically examined Smt. Bhanwari Devi, Rawat Ram and Guman Singh and found injuries on their person and prepared injury reports Exh.D/16, Exh.D/17 and Exh.D/18 respectively, which bear his signatures.

12. **PW-3 Mula Ram, PW-12 Ram Singh and PW-15 Bhanwar Lal** are the witnesses relating to Jeep No.RJ-23C-1570 recovered vide Exh.P/27. The driver of jeep was Ram Singh.

13. **PW-4 Rawat Ram, PW-8 Gumana Ram, PW-9 Smt. Bhanwari Devi and PW-14 Ramu Ram** are the witnesses of occurrence. Among them, PW-4, PW-8 and PW-9 also got injured in the same incident. PW-4 Rawat Ram has stated that deceased-Govind and Naveen were his brothers. He further stated that Gumana Ram, Bhanwari Devi, Govind, Naveen, tractor driver-Ramu Ram and himself were working in the field. At that time all of a sudden Bhanwar Singh, Rajendra Singh and other accused persons entered in their field. At that time, Bhanwar Singh and Rajendra

Singh were having 'kulhadi' in their hands. He further stated that Bhanwar Singh gave a 'kulhadi' blow on the neck of Govind Ram and Rajendra Singh gave a 'kulhadi' blow on the neck of Naveen, due to the injuries they died on the spot. Accused-Manohar Singh caused 'kassi' blow on his head and he sustained injuries. He went to hospital at Makrana. In cross-examination he denied the suggestion that the incident took place on account of passage. He has also denied the fact that he went to the Police Station. He was confronted with his previous statement Exh.D/3 and Exh.D/4 but they are not material. PW-8 Gumana Ram and PW-9 Smt. Bhanwari Devi have stated on the same line. PW-8 Gumana Ram is the reporter of incident. He has stated that he submitted Exh.P/1 on the spot to police, which bears his signature. He has stated that the accused-appellant gave 'kulhadi' blow on the neck of deceased Govind and Naveen. He further stated that he also sustained injury in the incident. He gave further details of investigation. In cross-examination, he has admitted that he is illiterate and knows only to do signature. Report (Exh.P/1) was got written by someone else. He has denied the fact that the matter was reported to police by Rawat Ram. He was confronted with Exh.D/1 and Exh.D/6 his previous statements. We have seen the relevant portions. In cross-examination, he has further stated that there was not any sort of old enmity with the accused-party. PW-9 Smt. Bhanwari Devi

stated that Bhanwar Singh after entering into field gave a 'kulhadi' blow on the neck of Govind and Rajendra Singh caused 'kulhadi' blow on to Naveen. Bhanwar Singh's wife gave 'kassi' blow on her head twice and caused a single blow on her hand. Naveen and Govind died on the spot.

14. **PW-14 Ramu Ram** is an independent witness. He stated that he was tilling the field of Ramdeo (brother of Gumana Ram). At about 5-5:15 p.m. when he turned the tractor from East towards West, at that time, he saw Bhanwar Singh causing 'kulhadi' blow on the neck of Govind and Rajendra Singh caused 'kulhadi' blow on neck of Naveen. Bhanwar Singh's wife caused a 'kassi' blow on the head of Gumana Ram's wife. Naveen and Govind fell down on earth due to the injury sustained by them. He became afraid and rushed his tractor towards the village. On the way he met Dula Ram and he narrated the incident to him. In addition to the abovementioned three accused persons, 4-5 other persons were also there, who were at some distance whom he could not identify.

15. **PW-7 Hema Ram** is the motbir witness of memos of arrest. He has stated that accused-Bhanwar Singh, Manohar Singh and Smt. Magan Kanwar were arrested vide Exhibits P/22, P/23 and P/24 respectively. PW-10 Meva Ram is the witness of Fard Exh.P/7

prepared at the time of taking clothes of Smt. Bhanwar Devi. PW-11 Khema Ram, PW-16 Bhaarta Ram and PW-18 Chandra Ram are the formal witnesses who managed vehicle to carry injured persons.

16. **PW-13 Madan Lal** is the previous owner of the agricultural field. He has only stated that he sold the land to Ramdeo (the brother of Gumana Ram). This witness has not supported the prosecution story and has been declared hostile. **PW-17 Kesara Ram** is a hostile witness. He has not supported the prosecution case.

17. **PW-19 Hari Kishan and PW-20 Rugga Ram** are the motbir witness of recovery of 'kulhadi'. A 'kulhadi' stained with blood was recovered at the instance of Bhanwar Singh in their presence vide Exh.P/32. The site plan of that recovery is Exh.P/33. Fards were prepared and they made their signature thereon.

18. **PW-23 Kailash** is the photographer. He took out the photographs of incident at the instance of police. On seeing the photographs he admitted that photos Exh.P/38 to Exh.P/82 and negative thereof Exh.P/83 (total 15 negatives) belong to his studio and were clicked by him.

19. **PW-24 Kan Singh** is the Patwari. He stated that on 5.7.96 he was posted as Patwari in village Barvali. On that day, he gave copy of Khatoni to police for the Samwat Year 2050 to 2053 (Exh.P/84) of Khsara No.159/6, Village Barvali, which bear his signature A to B, the 'girdavari' of that khsara (Exh.P/85) for the Samwat Year 2050 to 2053 and map of khsara nos (Exh.P/86 to P/87) bear his signature A to B.

20. **PW-25 Maggha Ram** was posted as Constable at P.S. Makrana. The 'Malkhana' Incharge Amra Ram (HC) handed over total 13 packets pertaining to FIR No.247/97 for being sent to FSL, Jaipur. The receipt of deposit at FSL is Exh.P/88. **PW-27 Amra Ram** is the Malkhana Incharge and he has stated the same facts. Further he stated that the articles remained intact in his safe custody.

21. **PW-26 Narendra Kumar Singh** stated that on 3.7.96 he was posted as SHO, P.S. Makrana. He has further stated that on that day, Rawat Ram informed him verbally that fight was ensuing in village Barwali. After making entry in 'Roznamcha' he went to the field of Ramdeo where Gumana Ram submitted report (Exh.P/1). He submitted challan after the completion of investigation in the court. **PW-28 Raj Kumar** is the Investigating

Officer of this case. He has given the details of investigation. Exp.P/2 site plan was prepared. Blood-smeared soil and controlled soil were taken from the place of incident vide Ex.P/3 and Ex.P/4. Clothes of deceased-Naveen and Govind were taken vide Exh.P/5 and Exh.P/6 respectively in presence of motbir witnesses. Blood-stained clothes of Smt. Bhanwari Devi were taken vide Exh.P/7 and slippers of deceased-Naveen and Govind were collected from the site vide Exh.P/18 and Exh.P/19. Fard Surat Lash and Panchayatnama of deceased persons Exh.P/14 and Exh.P/15 were prepared in the presence of motbirs. Statements of injured witnesses, namely, Gumana Ram, Smt. Bhanwari Devi and Rawat Ram were recorded. Accused-appellant Bhanwar Singh was arrested vide Exh.P/22. He gave information under Section 27 for the recovery of 'kulhadi', which was reduced in writing vide Exh.P/93. As per this information and at his instance vide Ex.P/32 'kulhadi' was recovered. The site plan of that place of recovery is Exh.P/37. Accused-Rajendra Singh was arrested vide Exh.P/92 and so also the other accused persons were arrested. Blood stained clothes, other material and blood-stained turban of accused-Bhanwar Singh were taken and sealed and Fards were prepared. He has further stated that photography of place of occurrence was got done. The relevant revenue record of the concerned Khasra were obtained and the post-mortem of dead-bodies was also got

conducted by doctors, injury reports of injured-Gumana Ram, Smt. Bhanwari Devi and Rawat Ram were taken. Sealed articles were sent to Forensic Science Laboratory for analysis and the report of FSL is Exh.P/96, chalk report is Exh.P/97. In his cross-examination, he has stated that on the spot there were marks of fresh tilling of field, which was shown in the site-plan (Exh.P/2) as J A L M. He has also stated that during investigation he went to in-laws of Rajendra Singh at Jerthi, district Sikar. He has stated that as per his investigation he did not find any place which was used by Bhanwar Singh as passage in the field between A B E O in Exh.P/2 (site plan).

22. **PW-29 Raniya Ram** stated that on 3.7.96 he was posted as Constable at P.S. Makrana. On that day, SHO, Narendra Kumar Singh gave FIR (Exh.P/1) at village Barwali, which he handed over to ASI, Prithvi Raj at P.S. Makrana. The Chak FIR (Exh.P/97), bears his signature C to D.

23. **PW-30 Prithvi Raj** stated that on 3.7.96 he was posted as Assistant Sub-Inspector and the charge of Police Station on that day was with him. On that day, Constable Raniya Ram produced report (Exh.P/1) given by the then SHO, Narendra Singh before him, upon which he registered case vide FIR No.247/96 for the

offence under Sections 302, 323, 447, 147, 148, 149 and 307 I.P.C.

24. From the side of defence, following five witnesses were produced. We have perused their statements :-

DW-1 Nadan Singh is the resident of Makrana. He has stated that on 3.7.1996 he went to the 'Dhani of Bhanwar Singh' to meet Rajendra Singh. He was not there. His father told him that Rajendra Singh had gone to his in-laws' house at Jerthi in Sikar district. In his cross-examination, he has stated that he does not know the distance between Sikar and Jerthi. **DW-2 Rupendra Singh** has stated that on 20-22.6.1996 he met with Rajendra Singh. Again on 30.6.1996 he met Rajendra Singh. He told that he was going to his in-laws' house. **DW-3 Surendra Singh** has stated that on 1.7.1996 he met with Rajendra Singh at Jerthi. On 2.7.1996 he left Jerthi. In cross-examination he has stated that he met first time with Rajendra Singh. **DW-4 Pokarmal** has stated that he is having a grossery shop at Jerthi. On 4.7.1996 police came in the village and asked for the house of father-in-law of Rajendra Singh. He further stated that on 1.7.1997 Rajendra Singh came on his shop and purchased biscuit, cigarette etc. On 2.7.99 and 3.7.99 he met him on the shop. In cross-examination he has stated that before this when he met Rajendra Singh he did not remember. He

also stated that he did not issue any bill of goods. **DW-5 Smt. Manbhar Kanwar** has stated that on 1.7.1997 Rajendra Singh came to Jerthi to take away his wife. The name of his wife is Vimla Kanwar. She further stated that on that night they took meals together.

25. So far as death of Govind and Naveen are concerned, both of them had expired on the spot. As per the statements of witnesses of occurrence, both of them were caused injuries by sharp weapon. The dead-bodies were lying on the spot when the police inspected the site. Fard Surat Lash were prepared, blood-stained clothes were collected. Panchayatnamas of dead-bodies Exh.P/19 and Exh.P/20 were prepared and in the opinion of Panchas, it was found that their death were caused by sharp weapons. A team of doctors conducted the post-mortem of their bodies. The reports Exh.P/14 and Exh.P/15 were prepared on the spot and in the opinion of doctors PW-2 Dr. C.P. Mathur, PW-21 Dr. Ramesh Bhambhani and PW-22 Dr. R.B. Singhal, the cause of death of Govind as per post-mortem report (Exh.P/14) is shock due to cutting of spinal cord and hemorrhage. Likewise, in the opinion of doctors the cause of death of deceased-Naveen as per the post-mortem report (Exh.P/15) is shock due to cutting of spinal cord, right lung and hemorrhage. Further these witnesses have stated

that the injuries on spinal cord was sufficient to cause death and those injuries were ante mortem in nature and they were caused by sharp weapon like 'khuladi'. Thus, from the evidence as stated above, the death of Govind and Naveen are culpable homicide amounting to murder and that has not been disputed by the accused-appellants.

26. From the accused-appellant's side much stress was given that the copy of 'Roznamcha' in which the facts with regard to the incident were entered into first time as admitted by PW-26 Narendra Singh SHO but in this respect, PW-26 Narendra Singh has stated that PW-4 Rawat Ram who was injured, has intimated that some fighting has happened in Village Barwali. He entered these facts in 'Roznamcha' and proceeded to Village Barwali. He has further stated in his cross-examination that PW-4 Rawat Ram had intimated that Bhanwar Singh and his family members were causing beatings. He advised Rawat Ram to go to hospital as he was injured. He has further stated that on his report, he was satisfied that some incident has happened in the outskirts of village Barwali. Thus, the said intimation to SHO, P.S. Makrana PW-26 Narendra Singh cannot be said to be the first information report and mere non-production of that 'Roznamcha' does not create any doubt in the prosecution story. The contentions of the accused-appellants that the

'Roznamcha' was not produced wherein amongst the names of accused, name of Rajendra Singh was not there, therefore, that 'Roznamcha' was not produced is not having any base. Not a single question has been asked to PW-26 by the defence side in this respect nor the 'Roznamcha' had been called by the accused-appellants in defence. PW-4 Rawat Ram has also stated that he did not make any report to police. Thus, the contention raised by the accused-appellants in this respect are hereby rejected.

27. A contention was raised by the appellant's side that in the instant case, no independent witness has been produced and all the witnesses of occurrence are the close relatives and interested witnesses. In the instant case, it has come on record that the place of occurrence was a field away from village and at the time of occurrence, no other person was present. The family members of complainant-party were engaged in agricultural activity and PW-14 Ramu Ram was tilling the field with the aid of tractor. They were not having any arms with them. Their presence is natural. As per the statement of these witnesses, the field in question was bought by them. Out of four witnesses of occurrence, three witnesses, namely, Gumana Ram (PW-8), Smt. Bhanwari Devi (PW-9) and Rawat Ram (PW-4) got injured in the same incident. They have been examined medically and their injury reports Gumana Ram S/o.

Nanu Ram (Exh.P/18), Smt. Bhanwari Devi W/o. Gumana Ram (Exh.P/16) and Rawat Mal S/o. Ram Dev (Exh.P/17) are on record. Thus, the presence of these witnesses cannot be ignored merely because they are the close relatives of deceased. Likewise, with regard to PW-14 Ramu Ram, same contention is also raised but PW-14 has denied any direct relationship with deceased or other witnesses. He was the tractor driver who was tilling the field. Thus, he is an independent witness. Thus, the contention of the appellants in this respect is not tenable. PW-4 Rawat Ram, PW-8 Gumana Ram and PW-9 Smt. Bhanwari Devi, thus, are the best witnesses. Likewise, PW-14 Ramu Ram is also a natural witness.

28. During the course of arguments, much emphasis was given that accused-appellant Rajendra Singh has wrongly been added as accused as he was not present in village at the time of occurrence and had gone to his in-laws' house at Jerthi, district Sikar and has not committed any crime. We have deeply considered the contention raised in this respect. The first contention raised in this respect is that his name was not reported by PW-4 Rawat Ram to the police and, therefore, the 'Roznamcha' was not produced in the court but this contention is not having any force. No question has been asked to PW-26 Narendra Singh (SHO) to whom PW-4 Rawat Ram is said to have reported the matter. PW-26 Narendra

Singh has stated that PW-4 Rawat Ram intimated that some fighting has taken place. The second contention raised is that no recovery of weapon of offence (i.e. 'kulhadi') has been shown from Rajendra Singh. In our opinion mere non-recovery of weapon of offence does not ipso facto make his presence doubtful. No conclusion can be drawn that he was not present at the time of occurrence. On the contrary, the witnesses of occurrence, namely, PW-4 Rawat Ram, PW-8 Gumana Ram, PW-9 Smt. Bhanwari Devi and PW-14 Ramu Ram have categorically stated that at the time of occurrence, Rajendra Singh was present and he was having a 'kulhadi' in his hand and he gave blow on the neck of Naveen, who died on the spot. The medical evidence also corroborates the same that Naveen sustained injury by sharp weapon. Naveen was a boy of about 4 years of age to whom the accused-Rajendra Singh has caused sharp injuries.

29. The main contention raised by the accused-Rajendra Singh is that at the time of incident he was at his in-laws' house at Jerthi, district Sikar. He has taken the plea of alibi. It is settled proposition of law that such plea is to be proved by the accused by strong evidence. The plea can succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the scene of occurrence as held by the Hon`ble Apex

Court in the case of **Dudh Nath Pandey Vs. State of U.P. reported in AIR 1981 (SC) page 911**. The relevant portion is reproduced hereunder :-

> " The plea of alibi postulates the physical impossibility of the presence of accused at the scene of offence by reason of his presence at another place. The plea can therefore succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed."

It is further clear that the onus to prove alibi is on the accused as it is a matter within his specific knowledge, thus, such plea must be proved conclusively. The view finds support from the authority **AIR 1981 (SC) page 1021 reported in State of Haryana Vs. Sher Singh**. The relevant portion is reproduced hereunder :-

> "4. When an accused pleads alibi, the burden is on him to prove it under Section 103 of the Evidence Act, which provides :
>
> > "103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
>
> **Illustrations** : (a) A prosecutes B for theft, and wishes the court to believe that B committed the theft to C. A must prove the admission. B wishes the court to believe that at the time in question, he was else where. He must prove it."

Accused pleading alibi must lead evidence to show that he was at a far distance so that he could not have committed the crime as held in **Karnail Singh Vs. State of Rajasthan reported in 1977 CRI. L.J. 1729**. The relevant portion is reproduced hereunder :

> 6. ....."In order to establish the plea of alibi, the appellant must have led evidence to show that he was so far off at the moment of crime from the place, where the offence was committed, that he could not have committed the imputed act."

Thus, keeping in mind the position of law on the point of alibi raised by the accused-appellant Rajendra Singh we have to first look to the evidence produced in defence. **DW-1 Nadan Singh** has stated that he did not see Rajendra Singh in the 'Dhani of Bhanwar Singh' and his father told him that he had gone to his in-laws' house at Jerthi. **DW-2 Rupendra Singh** has stated that on 30.6.1996 he met Rajendra Singh. He was saying that he will go to his in-laws. Thus, these two witnesses are not of helping that in fact on the day of occurrence i.e. 3.7.1996 Rajendra Singh was not in Village Barwali. **DW-3 Surendra Singh** simply said that he met Rajendra on 1.7.1996 at Jerthi. **DW-4 Pokarmal** is the shop-keeper of village Jerthi. He has simply said that Rajendra Singh bought biscuit, cigarette etc., from his shop on 1.7.1996, 2.7.1996 and 3.7.1996 but his evidence is vague and does not inspire

confidence. How it was possible to recollect the name of each customer who visited his shop. No documentary evidence has been produced. **DW-5 Smt. Manbhar Kanwar** is the sister-in-law of Rajendra Singh. She stated that Rajendra Singh took meal at her house on 3.7.1996 but being sister-in-law she is interested witness and as such does not inspire confidence. Thus, all the defence witnesses produced on behalf of Rajendra Singh do not conclusively establish that in fact on 3.7.1996 he was at Jerthi, district Sikar. Further, none of the witnesses have stated the distance between Village Jerthi and the place of occurrence. Neither Rajendra Singh has explained in his statement recorded under Section 313 Cr. P.C. nor this fact has been established by the defence through the prosecution witnesses. It was to be proved by defence that distance between the two places was such that it was not possible to commit crime. Thus, the plea taken by appellant-Rajendra Singh is not proved at all. The learned trial court has dealt with this plea. No infirmity is there. On the contrary four eye-witnesses out of whom three are the injured witnesses, have established the presence of Rajendra Singh. Their statements are corroborated by their injury report and the evidence produced by the prosecution side. FSL report also corroborates the statement of these witnesses.

30. It is pertinent to mention here that it is proved by the

prosecution evidence that the field in question was bought by the complainant party. In this respect document (Exh.P/28) is on record as well as oral evidence is there. Occurrence has taken place in the field of complainant-party and it is also revealed from the evidence that accused-appellants with other accused persons entered into the field armed with deadly weapons in their hands and they have committed serious crime. Thus, it is well proved that accused were the aggressor and accused-appellants have murdered Govind and Naveen.

31. It is also well proved by evidence that the weapon of offence i.e. 'kulhadi' was recovered at the instance of Bhanwar Singh. It is further proved that the article was sealed on the spot and link evidence has been produced which establishes that articles remained intact and that is supported by FSL Report (Exh.P/96) that the 'kulhadi' contained human blood. This circumstance is also against Bhanwar Singh.

32. On the basis of the aforesaid discussion, the contentions raised on behalf of accused-appellants are liable to be rejected and are hereby rejected. We have seen the findings of the learned trial court. The trial court after considering the entire material, has rightly concluded that Govind and Naveen were murdered by

Bhanwar Singh and Rajendra Singh respectively. The defence version has rightly been rejected in the presence of direct evidence. The pleas taken by the accused-appellants are not tenable.

Hence, the appeal filed by the accused-appellants Bhanwar Singh and Rajendra Singh is hereby dismissed. The judgment and order of the trial court is confirmed. Both the accused are in jail. They will serve out the remaining part of the sentence.

(MANAK MOHTA), J. **(N.N. MATHUR), J.**

Sanjay/-